

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
July 14, 2005 Session

**STATE OF TENNESSEE *ex rel.* DEBORAH BELFORD  
v. STEVEN GREEN**

**Appeal from the Juvenile Court for Knox County  
No. E-7166     Carey E. Garrett, Judge**

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**No. E2004-00311-COA-R3-JV - FILED AUGUST 15, 2005**

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The appeal involves child support arrearages incurred by Steven Green (“Father”) over a period spanning almost five years. For the first two years of this five-year period, Father lived in North Carolina before moving to Tennessee in December of 2000. The Juvenile Court concluded it did not have personal jurisdiction over Father sufficient to allow it to enter a judgment against him for retroactive child support for the time before Father moved to Tennessee. We conclude the Juvenile Court had personal jurisdiction over Father, reverse that portion of the final judgment, and remand for further proceedings.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile  
Court Affirmed in Part and Reversed in Part; Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., and SHARON G. LEE, JJ., joined.

Paul G. Summers, Attorney General and Reporter, Stuart F. Wilson-Patton, Senior Counsel, Nashville, Tennessee, for the Appellant, State of Tennessee *ex rel.* Deborah Belford.

John T. Sholly, Knoxville, Tennessee, for the Appellee Steven Green.

## OPINION

### Background

The pertinent facts are undisputed. The two children involved in this case are currently eleven and fourteen years old. Deborah Belford is the children's aunt and Father's biological sister. In 1998, Father and the children were residents of North Carolina. Deborah Belford and her husband, Thomas Belford, ("Petitioners") were citizens and residents of New Jersey, but were living in South Carolina pursuant to military assignment. In November of 1998, Petitioners began caring for Father's two children. On May 10, 1999, Petitioners obtained joint legal custody of the children via an order entered by the General Court of Justice for Dare County, North Carolina.<sup>1</sup> In this order, the North Carolina Court specifically noted that it had subject matter jurisdiction over the proceedings and personal jurisdiction over the parties. The North Carolina Court also stated:

That upon the execution of this Order, the State wherein each minor child shall reside will be the "home state" for the purposes of any future actions or modifications regarding the care, custody and control of said minor children in accordance with the Uniform Child Custody Jurisdiction Act, Chapter 50A of the North Carolina General Statutes.

Petitioners and the two children moved to Tennessee in August of 1999, approximately three months after Petitioners obtained joint legal custody. Father moved to Tennessee in December of 2000. On December 27, 2002, the State of Tennessee filed a petition on the Belfords' behalf to establish Father's child support payments.<sup>2</sup> An order was entered by the Juvenile Court Referee on September 12, 2003, which established Father's then current child support payment at \$469 per month. The Referee reserved ruling on the amount of Father's arrearages for child support and health insurance premiums.

On September 21, 2003, custody of the children was transferred from Petitioners to the children's mother, Melissa Green. The Referee entered an order the following month terminating Father's obligation to pay child support to Petitioners as the children no longer were in their care and custody. The Referee also entered an order concluding that pursuant to the Tennessee child support guidelines, Father was in arrears a total of \$19,904.92 in child support payments. The arrearage

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<sup>1</sup> When the North Carolina order was entered, Father was married to but separated from the children's mother, Melissa Green. Father and Melissa Green had a total of five children affected by the North Carolina order. More specifically, the North Carolina Court placed custody of two of the children with Deborah and Thomas Belford, Petitioners herein. Custody of a third child was placed with Jeffrey and Patricia Barnosky, residents of New Jersey. Patricia Barnosky is Father's biological sister. Custody of the two remaining children was placed with Father's biological parents, James and Veronica Green, also residents of New Jersey.

<sup>2</sup> Although the petition was filed by the State of Tennessee on the Belfords' behalf, we have referred to the Belfords, for ease of reference only, as though they filed the petition.

covered the entire time period the children were in Petitioners' care and/or custody, i.e., from December of 1998 through September 21, 2003. The Referee also entered a judgment against Father for \$414.87, which represented one-half of the out-of-pocket medical expenses incurred by Petitioners, thereby bringing the total amount of the judgment against Father to \$20,319.79.

Father appealed the decision of the Referee to the Juvenile Court Judge. After a hearing the Juvenile Court Judge entered a judgment providing as follows:

1. The Court finds that Petitioner obtained custody of the children at issue through an order from Dare County, North Carolina entered in May, 1999. The Court finds Petitioner and the children moved to Tennessee in August, 1999, and that [Father] moved to Tennessee in December, 2000. The Court finds the children left Petitioner's custody on September 21, 2003.
2. That in light of these findings, this Court did not have jurisdiction over [Father] until December, 2000. He does owe an obligation of support from that time until September 21, 2003. The Dare County, North Carolina District Court would have to determine any obligation prior to December, 2000....

The net effect of the Juvenile Court Judge's ruling was to reduce the amount of arrearages Father was ordered to pay by almost \$13,000. This appeal followed.

The only issue raised by the parties is whether the Juvenile Court erred when it concluded that it lacked personal jurisdiction over Father "until December, 2000..." and for that reason was prohibited from entering a judgment against him for retroactive child support which accrued prior to the time Father physically moved to Tennessee.

### **Discussion**

The factual findings of the Trial Court are accorded a presumption of correctness, and we will not overturn those factual findings unless the evidence preponderates against them. *See* Tenn. R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). With respect to legal issues, our review is conducted "under a pure de novo standard of review, according no deference to the conclusions of law made by the lower courts." *Southern Constructors, Inc. v. Loudon County Bd. Of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

Because the Juvenile Court stated it did not have jurisdiction "over" Father, we presume the Juvenile Court was referring to personal jurisdiction, as opposed to subject matter jurisdiction. Whether the Juvenile Court could exercise personal jurisdiction over Father certainly could be affected by when the lawsuit was filed. For example, if the petition had been filed after

Petitioners moved to Tennessee but before Father left North Carolina, then the issue of whether the Juvenile Court had personal jurisdiction over Father would be determined by reference to Tenn. Code Ann. § 36-5-2201. This statutory section is titled “Bases for jurisdiction over nonresident” and sets forth eight ways in which Tennessee courts can obtain personal jurisdiction over a nonresident in a proceeding “to establish, enforce, or modify a support order ....” See Tenn. Code Ann. § 36-5-2201. However, when the present petition to establish support actually was filed, Father was and had been a resident of Tennessee for approximately two years. Whether the Tennessee Juvenile Court did or did not have personal jurisdiction over Father “until December, 2000...” as held by the Juvenile Court is not dispositive as the Juvenile Court certainly had personal jurisdiction over Father, a resident of Tennessee for approximately two years by the time this action was filed. It is axiomatic that Tennessee courts have personal jurisdiction over Tennessee residents who are served within this State. See, e.g., *Rodier v. Fay*, 7 N.Y.S.2d 744 (N.Y. Sup. 1938)(“A state always has personal jurisdiction over its residents when personally served within the state.”). The Juvenile Court either did or did not have personal jurisdiction over Father. Because Father was a resident of Tennessee and personally was served with process in Tennessee, the Juvenile Court clearly had personal jurisdiction over Father.<sup>3</sup>

Because the Juvenile Court incorrectly concluded it lacked personal jurisdiction or at most had some sort of partial personal jurisdiction over Father when it issued its ruling, it did not determine whether the Referee correctly calculated the amount of Father’s arrearages for: (1) November of 1998 through July of 1999, the time period when Father was in North Carolina and Petitioners and the children presumably were in South Carolina; and (2) August of 1999 through November of 2000, which is when Father was in North Carolina and Petitioners and the children were in Tennessee. On remand, the Juvenile Court is to determine whether the Referee properly calculated Father’s arrearages based on the Tennessee child support guidelines for the time when only Petitioners and the children were in Tennessee, i.e., from August of 1999 through November of 2000. With regard to November of 1998 through July of 1999, we believe the Referee erred in applying the Tennessee child support guidelines since none of the parties or the children lived in Tennessee at that time. On remand, the Juvenile Court is to calculate Father’s child support arrearage for the period from November, 1998, through July, 1999, and enter judgment accordingly. The calculation will be based upon the applicable law, i.e., the law of North Carolina or the law of South Carolina, as determined by the Juvenile Court.<sup>4</sup>

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<sup>3</sup> It is important to note that because no child support order had been issued in either North Carolina or South Carolina, this case does not involve the authority of the Tennessee courts to modify an existing child support order. As such, the provisions of the Uniform Interstate Family Support Act, Tenn. Code Ann. § 36-5-2001 *et seq.* are not triggered. Cf. *LeTellier v. LeTellier*, 40 S.W.3d 490, 495 (Tenn. 2001)(“An action to establish, enforce, or modify a Tennessee order is transformed into a one-state proceeding when long-arm personal jurisdiction over the out-of-state resident is acquired pursuant to § 36-5-2201. Once that is done, the out-of-state resident is no longer out-of-state for purposes of that action, and the action loses its interstate character.”).

<sup>4</sup> Because of the sparse record on appeal, we are unable to properly determine whether the law of North Carolina or the law of South Carolina would apply in determining Father’s arrearages for November of 1998 through July of 1999.

We affirm the portion of the Juvenile Court's order upholding the decision of the Referee regarding Father's arrearages for the period of time Father lived in Tennessee and Petitioners had custody of the children, i.e., from December 2000 through September 21, 2003. We reverse that portion of the judgment of the Juvenile Court holding that it lacked personal jurisdiction over Father sufficient to allow it to award arrearages for the time period before Father moved to Tennessee and remand for further proceedings as ordered above.

### **Conclusion**

The judgment of the Juvenile Court is affirmed in part and reversed in part, and this cause is remanded to the Juvenile Court for further proceedings as necessary and consistent with this Opinion and for the collection of the costs below. Costs on appeal are assessed against the Appellee, Steven Green.

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D. MICHAEL SWINEY, JUDGE